

Yulcan Materials Company

CHEMICALS DIVISION / P. O. BOX 7688 • BIRMINGHAM, ALABAMA 35223 • TELEPHONE 205 877-3000



December 14, 1979

Mr. Jim Forshaw
Forshaw Chemical Company
P. O. Box 6055
Charlotte, NC 28207

Dear Jim:

Enclosed is your copy of the new addendum to our Agency Agreement. The new rail rate to Wichita is effective on December 15, 1979, and Uniroyal Ltd. has promised that the first shipment will be sent early, the week of December 17, 1979. I will let you know as soon as it arrives in Wichita.

Sincerely yours,

D. R. Lindsay
Product Manager

/sma

Enclosure

RECEIVED DEC 17 1979

ADDENDUM TO
AGENCY AGREEMENT DATED JANUARY 31, 1972

WHEREAS, VULCAN MATERIALS COMPANY, a New Jersey corporation, through its Chemicals Division (hereinafter referred to as "Vulcan") and FORSHAW CHEMICALS INCORPORATED, a North Carolina corporation (hereinafter referred to as "Forshaw"), entered into that certain Agency Agreement dated January 31, 1972, which was amended August 19, 1974 (which Agency Agreement and amendment thereto are hereinafter referred to as the "Agreement");

WHEREAS, the demand of Vulcan's customers for pentachlorophenol has exceeded Vulcan's current production plans and, as a result, Vulcan has arranged to import from Canada sufficient pentachlorophenol to meet this excess demand;

WHEREAS, because of the price being paid for this Canadian pentachlorophenol, in addition to the import costs and freight duties associated therewith, it would be unprofitable for Vulcan to import pentachlorophenol and pay Forshaw a full commission on sales orders solicited by Forshaw which are filled by Canadian pentachlorophenol; and

WHEREAS, Forshaw is willing to accept a lower commission on sales of Canadian pentachlorophenol;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties agree to the following modifications to the Agreement:

Part Number Six of the Agreement titled "Commission" is modified by deleting the first two sentences thereof and substituting therefor the following, and in all other respects remains unchanged:

"Effective November 15, 1979, Forshaw shall receive a monthly commission based on all sales solicited by Forshaw and accepted and invoiced by Vulcan during the preceding month. This commission shall be ten percent (10%) of the total invoiced amount, less all freight charges which may have been included in the invoices, except that Forshaw shall receive a commission of five percent (5%) on sales orders solicited by Forshaw which are filled by pentachlorophenol Vulcan has imported from Canada. This lesser commission to be paid with respect

to the filling of sales orders with pentachlorophenol imported from Canada will remain in effect only until Vulcan's domestic production capacity is increased to the point at which purchase of Canadian pentachlorophenol is no longer required to fill sales orders."

IN WITNESS WHEREOF, the parties, intending to be legally bound hereto, have caused this addendum to the Agreement to be executed by their respective authorized representatives this 5th day of December, 1979.

VULCAN MATERIALS COMPANY
CHEMICALS DIVISION

By *J. P. J. MacBertling*
Title: *J. P. J. MacBertling*
FORSHAW CHEMICALS INCORPORATED

By *Thomas J. Lusk*
Title: President

AGENCY AGREEMENT

THIS AGREEMENT made this 31st day of January, 1972, by and between VULCAN MATERIALS COMPANY, a New Jersey Corporation, with its Chemicals Division office at Post Office Box 545, Wichita, Kansas 67201 (hereinafter referred to as "VULCAN"), and FORSHAW CHEMICALS INCORPORATED, a North Carolina corporation, with offices at 650 State Street, Charlotte, North Carolina 28208 (hereinafter referred to as "FORSHAW"),

WITNESSETH:

WHEREAS, Vulcan is engaged in the production of technical pentachlorophenol (hereafter referred to as "penta"); and

WHEREAS, Vulcan desires that Forshaw act as its agent for the solicitation of orders for the sale of such product; and

WHEREAS, Forshaw is knowledgeable with respect to the properties and uses of penta and has contacts within the wood pressure treating industry; and

WHEREAS, Forshaw desires to act as Vulcan's agent for the solicitation of orders for the sale of penta within the wood pressure treating industry,

NOW, THEREFORE, in consideration of the premises and the material advantages to both parties and of the covenants and agreements hereof to be kept and performed, the parties hereto agree as follows:

1. AGENCY CREATED. Forshaw is hereby designated as Vulcan's agent solely for the solicitation of orders for the sale of penta in and for the territory set out in Exhibit "A" attached hereto and made a part hereof.

2. TERM. The term of this agreement shall be from the date hereof to December 31, 1976, and shall continue from year to year thereafter, subject to cancellation by either party on twelve (12)

months' prior written notice, such cancellation to be effective as of December 31, 1976, or any December 31 thereafter.

3. SPECIFICATIONS AND WARRANTY. The penta for which orders are to be solicited shall meet the specifications and be subject to the warranty set out in Exhibit "B" attached hereto and made a part hereof.

4. BASIC AGREEMENT. Forshaw agrees to solicit orders for the sale of penta as the agent of Vulcan. All orders so solicited by Forshaw shall be subject to acceptance by Vulcan at Wichita, Kansas.

Vulcan agrees to maintain adequate inventories of penta in bulk and in 50-pound net bags at Vulcan's Wichita, Kansas plant. Vulcan will also maintain adequate inventories of 50-pound net bags at competitive shipping locations such as Beaumont, Texas, Saginaw, Michigan, and St. Louis, Missouri. Adequate inventories of penta to fulfill orders solicited by Forshaw will be determined and maintained by Vulcan at all times.

Forshaw shall provide Vulcan with a schedule reflecting its best forecast as to the quantities of penta required to fill all orders which it anticipates soliciting for acceptance by Vulcan during each of the next two succeeding months from the current date. Such schedule shall be updated on or before the first day of each month hereafter.

5. DILIGENT PERFORMANCE. Forshaw agrees to diligently solicit orders for penta on behalf of Vulcan from consumers in the wood pressure treating trade in the area established in Exhibit "A" hereof. It is understood and agreed, however, that Vulcan retains the right to decrease such geographical area and/or exclude specific consumer accounts within such area, if, ~~on reasonable judgment~~ ^{on reasonable judgment} Forshaw is not actively and diligently soliciting such business. In such event, Forshaw is to be given ninety (90) days' written notice by

Vulcan of its deficiency, and Vulcan's intent to modify such agreement unless such deficiency is corrected within such 90-day period. Should Forshaw fail to correct such deficiency within such 90-day period, to Vulcan's satisfaction, Vulcan's stated modification of the terms of this agreement shall become effective at the expiration of such 90-day period.

~~In order to make available to Forshaw an attractive business opportunity as agent for Vulcan, during the pendency of this agreement, with respect to any territory then being serviced by Forshaw, Vulcan agrees not to utilize any other method of solicitation, direct or indirect, except for those accounts set out in Exhibit "A" hereof.~~

5. COMMISSION. Forshaw shall receive a monthly commission based on all sales solicited by Forshaw, and accepted and invoiced by Vulcan during the preceding month. This commission shall be ten per cent (10%) of the total invoiced amount, less all collectible freight charges which may have been included in the invoices. For the purpose of this agreement, Vulcan shall assume full responsibility for the accounts receivable and no deductions or withholding of commissions will be made from the commissions for unpaid invoices. It is understood and agreed Vulcan reserves the right, however, not to accept orders forwarded to it by Forshaw for any reasons.

~~Vulcan retains the right to determine the inclusion or exclusion of any specific consumer accounts covered by this agreement, in cases in which the product may be sold outside of and shipped into the geographical area defined in Exhibit "A" hereof, on sold inside of and shipped outside such geographical area.~~

Copies of Vulcan invoices for Parts to all accounts covered by this contract shall reflect Forshaw as Vulcan's agent and Forshaw shall receive copies of all such invoices.

7. INSURANCE. Forshaw shall carry, at its own expense, liability, workmen's compensation, and other business insurance,

12 mdy

covering its business operations and employees and reflecting Vulcan as an additional insured.

8. RELATION OF FORSHAW AND VULCAN. It is expressly understood that the position and function of Forshaw pursuant to the terms of this agreement is one of an agent of Vulcan. All orders (offers to purchase) tendered to Forshaw by third parties are subject to acceptance or rejection by Vulcan at its Wichita office. Pursuant to this agreement Vulcan shall retain all indicia of ownership, including title, dominion and risk, with respect to the products for which Forshaw solicits orders until indicia of ownership are transferred to the party which initiated the order (that is, the party tendering its order to Forshaw, as agent for Vulcan, for transmission to Vulcan to accept or reject). It is contemplated by this agreement that Forshaw will never assume title, dominion or risk, or any other indicia of ownership, with respect to products covered by such orders which are accepted by Vulcan.

9. FORCE MAJEURE. If either party shall be prevented or delayed in the performance of any or all of the provisions hereof, by reason of any labor dispute, industrial disturbance, delay in transportation, act of God, fire, explosion, epidemic, war, embargo, accident, governmental action, or any cause beyond its control, whether similar to the causes enumerated or otherwise, the obligations hereunder of such party shall be suspended for so long as such case shall be in effect and any delay or loss suffered by the other party shall not be chargeable in any way to such party; provided, however, the party suffering such cause shall remedy the same with all reasonable dispatch. The party suffering such cause shall immediately notify the other party of any inability to perform its obligations hereunder.

10. GENERAL. No terms, conditions, or warranties other than those stated herein, and no agreements or understanding, oral or written, in any way purporting to modify these terms or conditions,

shall be binding on either of the parties hereto unless hereafter made in writing and signed by its authorized representatives, except as provided in Paragraph 5 hereof. All proposals, negotiations, and representations made prior and with reference hereto, are merged herein.

11. ASSIGNABILITY. Neither party hereto shall have the right to assign this agreement or to make a transfer of this agreement by operation of law or otherwise, without the prior written consent of the other.

12. WAIVER. The waiver by either party hereof of any breach or failure to enforce any of the terms or conditions of this agreement shall be limited to the specific breach avowed, or the specific failure to enforce and shall not in any way affect, limit or waive that party's right at any time to enforce strict compliance with every other term or condition hereof, or its right to enforce strict compliance in the future with terms or conditions so avowed or failed to be enforced.

13. NOTICES. All notices required by this agreement shall be addressed as follows, unless otherwise advised:

(a) In the case of Forshaw to:

Forshaw Chemicals Incorporated
650 State Street
Charlotte, North Carolina 28208

(b) In the case of Vulcan to:

Vulcan Materials Company
Chemicals Division
P. O. Box 545
Wichita, Kansas 67201

IN WITNESS WHEREOF, the parties, intending to be legally bound hereto, have caused this agreement to be executed by their respective representatives thereunto duly authorized the day and year first above written.

FORSHAW CHEMICALS INCORPORATED

Thomas Forshaw
President

"Forshaw"

VULCAN MATERIALS COMPANY
Chemicals Division

M. E. Clark
Executive Vice President

2-3-72
Wichita, Kansas

EXHIBIT "A" -- Page 1 of 1

Forshaw Territory Defined

Vulcan hereby authorizes Forshaw to solicit orders from the wood pressure treating industry, except as hereinafter provided, in the geographical area designated as follows:

- | | | |
|-------------------|-------------------|---------------|
| 1. Alabama | 8. Pennsylvania | 15. Tennessee |
| 2. Georgia | 9. Maryland | 16. Kentucky |
| 3. Florida | 10. Delaware | |
| 4. South Carolina | 11. New Jersey | |
| 5. North Carolina | 12. Connecticut | |
| 6. Virginia | 13. Massachusetts | |
| 7. West Virginia | 14. New Hampshire | |

Provided, however, that the following accounts are expressly excluded from this agreement and exclusively reserved by Vulcan:

1. Gulfport Creosoting Co., Mobile, Alabama.
2. International Paper Co., Mobile, Alabama.
3. ~~Koppers Co., Inc., Pittsburgh, Pennsylvania, and all plant locations.~~
4. Homosote, Inc., Trenton, New Jersey.
- *5. American Creosote Works, Inc., Jackson, Tennessee.
- *6. American Creosote Works, Inc., Pensacola, Florida.

*Excluded from agreement if product is purchased at New Orleans, Louisiana. Included in agreement if product is purchased at customer's plants located at Jackson, Tennessee, and Pensacola, Florida.

Exhibit "B" -- Page 1 of 1

Specification for Pentachlorophenol

January 31st, 1972
To contract dated ~~November 10, 1971~~, between Forshaw Chemical
Incorporated and Vulcan Materials Company, Chemicals Division.

<u>CHARACTERISTICS</u>	<u>METHODS</u>	<u>SPECIFICATIONS</u>
Appearance "	Vulcan	Polished Flakes
Color	Vulcan	Light Brown
Pentachlorophenol, % Wt.	Vulcan	86.0 Minimum
Total Chlorinated Phenols % Wt.	AWPA	96.0 Minimum
Inert Ingredients, % Wt.	Calculated*	4.0 Maximum
Solidifying Point, °C	AWPA	180.0 Minimum
Alkali Insolubles, % Wt.	AWPA	0.50 Maximum
Particle Size, % Wt.	US Std. Sieve	100% minus No. 3

* 100% minus total chlorinated phenols.

WARRANTY OF VULCAN

A. Vulcan warrants that the penta supplied hereunder shall conform to the specifications set out above.

B. Vulcan further warrants that the penta supplied hereunder shall be fit for the purposes of wood pressure preservation only if used in accordance with the specifications and procedures established by the American Wood Preservers Association. There is no warranty that the penta to be supplied hereunder shall be fit for any other purpose whatsoever, nor is there any other warranty, express or implied, except as is expressly set out herein.

C. It is expressly agreed that Vulcan shall not be liable for any incidental or consequential damages arising herefrom.

ADDENDUM TO AGENCY AGREEMENT DATED JANUARY 31, 1972

WHEREAS, an agreement was made on the 31st day of January, 1972, by and between VULCAN MATERIALS COMPANY, a New Jersey Corporation, with its Chemicals Division office at Post Office Box 545, Wichita, Kansas 67201 (hereinafter referred to as "VULCAN"), and FORSHAW CHEMICALS INCORPORATED, a North Carolina Corporation, with offices at 650 State Street, Charlotte, North Carolina 28208 (hereinafter referred to as "FORSHAW").

NOW, THEREFORE, in consideration of the material advantages to both parties, the parties agree to the following modifications and or changes in the agreement as follows:

PART NUMBER TWO OF THE AGREEMENT TITLED "TERM"

The term of the agreement shall be extended from December 31, 1976, to December 31, 1979, and shall continue from year to year thereafter, subject to cancellation by either party on twelve (12) months prior written notice, such cancellation to be effective as of December 31, 1979, or any December 31 thereafter.

PART NUMBER SIX OF THE AGREEMENT TITLED "COMMISSION"

Effective September 1, 1974, FORSHAW shall receive a monthly commission based on all sales solicited by FORSHAW, and accepted and invoiced by Vulcan during the preceding month. This commission shall be seven and one-half percent (7-1/2%) of the total invoiced amount, less all freight charges which may have been included in the invoices. For the purposes of this agreement, Vulcan shall assume full responsibility for the accounts receivable and no deductions or withholding of commissions will be made from the commissions for unpaid invoices. It is understood and agreed Vulcan reserves the right, however, not to accept orders forwarded to it by FORSHAW for any reason.

Vulcan retains the right to determine the inclusion or exclusion of any specific consumer accounts covered by this agreement in cases in which the product may be sold outside of and shipped into the geographical area defined in Exhibit "A" hereof, or sold inside of and shipped outside such geographical area.

All Vulcan invoices resulting from Forshaw's solicitation shall reflect that Forshaw is sales agent of Vulcan, and Forshaw shall receive copies of all such invoices.

The amount of the discount will be subject to semi-annual review by both parties and may be revised upward or downward as of the first day of March or September of any calendar year, if changes in the marketplace indicate mutual advantage and such changes are mutually agreed to by both parties.

PART NUMBER FOURTEEN OF THE AGREEMENT TITLED "WAIVER"

The modifications of the agreement contained in the addendum shall in no way modify the waiver contained in the agreement and shall be limited to the specific modifications herein stated.

IN WITNESS WHEREOF, the parties intending to be legally bound hereto, have caused this addendum to the agreement to be executed by their respective representatives thereunto duly authorized this 27th day of August, 1974.

FORSHAW CHEMICALS INCORPORATED

Thomas Forshaw
By President
Title

"Forshaw"

748- JWH
VULCAN MATERIALS COMPANY
Chemicals Division

By Joe Bailz
Title Pres

"Vulcan"

Attachment G

A G R E E M E N T

THIS AGREEMENT made this 1st day of December, 1971.

by and between VULCAN MATERIALS COMPANY, a New Jersey Corporation, with its Chemicals Division office at Post Office Box 545, Wichita, Kansas 67201 (hereinafter referred to as "VULCAN"), and FORSHAW CHEMICALS INCORPORATED, a North Carolina corporation, with offices at 650 State Street, Charlotte, North Carolina 28208 (hereinafter referred to as "FORSHAW"),

WITNESSETH:

WHEREAS, Vulcan desires to sell its product known as technical pentachlorophenol (hereinafter referred to as "penta") for direct use by the wood pressure treating industries and for use by Forshaw in making wood preservative formulated products which will in turn be sold to the wood pressure treating industry; and

WHEREAS, Forshaw desires to solicit orders for the sale of penta and desires to purchase and use said product for the purpose of manufacturing and selling formulated products to the wood pressure treating industry,

NOW, THEREFORE, in consideration of the premises and the material advantages to both parties and of the covenants and agreements hereof to be kept and performed, the parties hereto agree as follows:

1. TERM: The term of this agreement shall be from January 1, 1972, to December 31, 1976, and shall continue from year to year thereafter, subject to cancellation by either party on twelve (12) months' prior written notice, such cancellation to be effective as of

Forshaw's requirements are estimated at 1,000,000 pounds per year minimum to 5,000,000 pounds per year maximum. However, purchases in one month shall not exceed twenty per cent (20%) of Forshaw's previous year's requirements without Vulcan's consent.

Vulcan agrees to maintain adequate inventories of penta in bulk and in 50-pound net bags at Vulcan's Wichita, Kansas plant. Vulcan will also maintain adequate inventories of 50-pound net bags at competitive shipping locations such as Beaumont, Texas, Saginaw, Michigan, and St. Louis, Missouri. Adequate inventories of penta to fulfill Forshaw's scheduled requirements for deliveries will be determined and maintained by Vulcan at all times.

Forshaw shall provide Vulcan with a schedule reflecting the quantities of penta Forshaw desires shipped or delivered from each warehouse location during the next coming month, on or before the first day of each prior month, together with estimates of the amounts which it anticipates will be required from each inventory warehouse location during the coming two month period.

3. SPECIFICATIONS: The penta to be delivered by Vulcan shall meet the specifications attached hereto and made a part hereof as Exhibit "A".

All claims relating to quality, quantity, weight, or condition of product shall be waived by Forshaw unless presented to Vulcan within ninety (90) days of receipt of such product by Forshaw.

4. MANNER OF DELIVERY: Vulcan shall load the penta into bags and place such bags on pallets, for shipment via trucks or railroad cars or load into bulk storage for shipment via bulk air-unloading trucks, as Forshaw shall direct.

bags will comply with the requirements of governmental authorities having jurisdiction but with tolerances of no greater than 0.5 per cent. Vulcan shall be responsible for the appropriate labeling of such bags and the registration of such labels with the governmental authorities having jurisdiction.

The bulk shipments shall not be less than 40,000 pounds net product and the amount of bulk materials in each delivery shall be determined by weighing, on certified scales, the conveyances before and after loading. Vulcan upon request shall provide the receiving party with a certified scale ticket for each delivery.

5. FRANCHISE FEATURES:

A. Forshaw agrees to purchase its total requirements of penta from Vulcan. Forshaw will not purchase from other manufacturers except with consent of Vulcan, so long as Vulcan is able to supply the needs of Forshaw. Vulcan, in turn, agrees Forshaw shall be its sole distributor of penta for the wood pressure treating industry in the agreed upon geographical area, and Vulcan will not sell to other distributors in such area for resale in such wood pressure treating industry, or solicit such industry directly without the consent of Forshaw, except as hereinafter provided.

If, during the term of this agreement, Forshaw is able to purchase penta from another manufacturer, at a lower delivered cost, and such penta is manufactured in the United States and of like quantity and quality as that supplied by Vulcan, and, further, Forshaw presents written evidence of such fact and commitment for sale at such lower delivered cost satisfactory to Vulcan, Vulcan may either adjust its price to meet such lower cost or allow Forshaw to purchase

B. GEOGRAPHICAL AREA: Vulcan hereby authorizes Forshaw to solicit orders from the wood pressure treating industry, except as hereinafter provided, in the geographical area designated as follows:

- | | | |
|-------------------|-------------------|---------------|
| 1. Alabama | 8. Pennsylvania | 15. Tennessee |
| 2. Georgia | 9. Maryland | 16. Kentucky |
| 3. Florida | 10. Delaware | |
| 4. South Carolina | 11. New Jersey | |
| 5. North Carolina | 12. Connecticut | |
| 6. Virginia | 13. Massachusetts | |
| 7. West Virginia | 14. New Hampshire | |

Forshaw agrees to diligently solicit orders for penta on behalf of Vulcan from consumers in the wood pressure treating trade in said geographical area. It is understood and agreed, however, that Vulcan retains the right to decrease such geographical area and/or exclude specific consumer accounts within such area, if, in Vulcan's sole judgment, Forshaw is not actively and diligently soliciting such business. In such event, Forshaw is to be given ninety (90) days' written notice by Vulcan of its deficiency, and Vulcan's intent to modify such agreement. Should Forshaw fail to correct such deficiency within such 90-day period, to Vulcan's satisfaction, Vulcan's stated modification of the terms of this agreement shall become effective at the expiration of such 90-day period.

Vulcan retains the right to determine the inclusion or exclusion of any specific consumer accounts covered by this agreement in cases in which the product may be sold outside of and shipped into the geographical area defined in Paragraph 5B hereof, or sold inside of and shipped outside such geographical area.

accounts therein which are classified and sold at consumer price levels. Orders accepted from consumers listed on Exhibit "B" attached hereto and made a part hereof are expressly excluded from this agreement and are exclusively reserved by Vulcan.

It is agreed Forshaw is an independent contractor under this agreement for all purposes and is free to exercise its own judgment as to the persons from whom it will solicit business, and the time, place and manner of solicitation. It is further understood Forshaw, as an independent contractor, will carry, at its own expense, all liability, casualty, workmen's compensation and other business insurance, and that Vulcan will in no manner whatsoever control or be responsible for Forshaw's actions.

It is understood all orders solicited by Forshaw on behalf of Vulcan are subject to the approval and acceptance of Vulcan at Wichita, Kansas.

D. Further, it is understood and agreed that in return for this franchise, and in return for Vulcan's agreement to include the following accounts and tonnages, presently served by Vulcan, in the franchise agreement, Forshaw agrees the accounts and tonnages hereby listed will not be solicited or sold by Forshaw for a period of one year following the cancellation of this agreement, if the agreement is cancelled by Forshaw.

<u>ACCOUNTS</u>	<u>VULCAN BUSINESS POUNDS SOLD</u>
1. Walker Williams Lumber, Hatchechubbee, Ala.	200,000
2. Fox Lumber, Centreville, Alabama	80,000 20
3. Fullco Lumber, Haleyville, Alabama	300,000
4. Southern Wood-Piedmont, Baldwin, Fla. Plant	500,000

ACCOUNTSVULCAN BUSINESS
POUNDS SOLD

6. Atlantic Creosoting Co., Portsmouth, Va. Plant	100,000 (excluded)
7. Post and Lumber Preserving, Quincy, Florida	40,000
8. Brown Wood Preserving Co., Louisville, Ky.	150,000
9. American Creosote Works, Pensacola, Fla.	200,000

6. COMMISSIONS AND DISCOUNTS:

A. Forshaw will receive a fifteen per cent (15%) discount from Vulcan's established consumer prices on all 40,000 pound minimum shipments of packaged penta purchased by Forshaw, shipped via rail and/or maximum bulk truckloads of penta shipped to Forshaw's formulating plant at Charlotte, North Carolina, and/or to other formulating plant points which may be established in the future by mutual agreement of both parties. This discount will only apply for penta purchased for the purpose of use in the manufacturing of formulated products by Forshaw or for the purpose of reselling to less than truckload and/or less than carload buyers. This discount will not apply to penta shipped or delivered to consumers in truckload or carload lots and sold at truckload/carload prices.

B. Forshaw shall receive a monthly commission based on all sales to Forshaw's accounts, shipped and invoiced by Vulcan during the preceding month. This commission shall be ten per cent (10%) of the total invoiced amount, less all freight charges which may have been included in the invoices. For the purposes of this sub-paragraph of this agreement, Vulcan shall assume full responsibility for the accounts receivable and no deductions or withholding of commissions will be made from the commissions for unpaid invoices. It is understood and agreed Vulcan reserves the right, however, to refuse shipments

C. Forshaw will receive a ten per cent (10%) discount from Vulcan's established consumer prices on all penta sold, shipped or delivered directly to Forshaw's accounts from Vulcan production or warehouse points, and invoiced to Forshaw.

On each Forshaw order, invoiced by Vulcan, Forshaw shall receive a copy of each Vulcan invoice. On each Forshaw order, invoiced by Forshaw, Vulcan shall receive a copy of each Forshaw invoice.

7. TERMS OF PAYMENT: Net thirty (30) days from date of invoice, payable, in Wichita, Kansas, in lawful money of the United States. Acceptance by Vulcan of bank drafts, checks, or other media of payment will be subject to immediate collection at the full face amount thereof. If Forshaw fails to pay any invoice within sixty (60) days after its date, Vulcan may decline to make deliveries except for cash until such time as Forshaw has paid all invoices remaining unpaid more than thirty (30) days from their respective dates.

8. FORCE MAJEURE: If either party shall be prevented or delayed in the performance of any or all of the provisions hereof, by reason of any labor dispute, industrial disturbance, delay in transportation, act of God, fire, explosion, epidemic, war, embargo, accident, governmental action, or any cause beyond its control, whether similar to the causes enumerated or otherwise, the obligations hereunder of such party shall be suspended for so long as such case shall be in effect and any delay or loss suffered by the other party shall not be chargeable in any way to such party; provided, however, the party suffering such cause shall remedy the same with all reasonable

and shall notify the other party when it is prepared to resume performance of its obligations, such notification to be not less than thirty (30) days in advance of the time at which such party may expect to resume performance of its obligations.

9. TAXES: Any tax or other charge by Federal, State, Municipal, or other authority hereafter becoming effective within the period upon the production, sale and/or shipment of the product shall be added to the price of the product and paid by the buyer.

10. WARRANTY:

A. Vulcan warrants that the penta supplied hereunder shall conform to the specifications set out in Exhibit "A", attached hereto and made a part hereof.

B. Vulcan further warrants that the penta supplied hereunder shall be fit for the purposes of wood pressure preservation only if used in accordance with the specifications and procedures established by the American Wood Preservers Association. There is no warranty that the penta to be supplied hereunder shall be fit for any other purpose whatsoever, nor is there any other warranty, express or implied, except as is expressly set out herein.

C. It is expressly agreed that Vulcan shall not be liable for any incidental or consequential damages arising herefrom.

11. GENERAL: No terms, conditions, or warranties other than those stated herein, and no agreements or understanding, oral or written, in any way purporting to modify these terms or conditions, shall be binding on either of the parties hereto unless hereafter made in writing and signed by its authorized representatives. All proposals, negotiations, and representations made prior and with reference hereto,

the other.

13. WAIVER: The waiver by either party hereof of any breach or failure to enforce any of the terms or conditions of this agreement shall be limited to the specific breach avowed, or the specific failure to enforce and shall not in any way affect, limit or waive that party's right at any time to enforce strict compliance with every other term or condition hereof, or its right to enforce strict compliance in the future with terms or conditions so avowed or failed to be enforced.

14. NOTICES: All notices required by this agreement shall be addressed as follows, unless otherwise advised:

(a) In the case of Forshaw to:

Forshaw Chemicals Incorporated
650 State Street
Charlotte, North Carolina 28208

(b) In the case of Vulcan to:

Vulcan Materials Company
Chemicals Division
P. O. Box 545
Wichita, Kansas 67201

IN WITNESS WHEREOF, the parties, intending to be legally bound hereto, have caused this agreement to be executed by their respective representatives thereunto duly authorized this ____ day of _____, 19____.

FORSHAW CHEMICALS INCORPORATED

"Forshaw"

VULCAN MATERIALS COMPANY

Yulcan Materials Company

CHEMICALS DIVISION / P. O. BOX 545 • WICHITA, KANSAS 67201 • TELEPHONE 316 524-4211

August 29, 1974

Mr. Thomas Forshaw
President
Forshaw Chemicals Inc.
Box 6055
Charlotte, North Carolina 28207

Dear Tom:

Enclosed you will find fully executed copies of the addendums to the 1972 Formulator and Agency agreements for attachment to your contracts and for your files.

The contents of your two letters with regard to the addendums have been noted by Lee Bailey, Tom Holcomb, and myself and we will file these with the addendums for future consideration as the need arises.

Sincerely,



Howard A. Stedman
Manager, Agricultural Chemicals

HAS:bh

Enclosures

SEP 3 1974

WHEREAS, an agreement was made on the 31st day of January, 1972, by and between VULCAN MATERIALS COMPANY, a New Jersey Corporation, with its Chemicals Division office at Post Office Box 545, Wichita, Kansas 67201 (hereinafter referred to as "VULCAN"), and FORSHAW CHEMICALS INCORPORATED, a North Carolina Corporation, with offices at 650 State Street, Charlotte, North Carolina 28208 (hereinafter referred to as "FORSHAW").

NOW, THEREFORE, in consideration of the material advantages to both parties, the parties agree to the following modifications and or changes in the agreement as follows:

PART NUMBER TWO OF THE AGREEMENT TITLED "TERM"

The term of the agreement shall be extended from December 31, 1976, to December 31, 1979, and shall continue from year to year thereafter, subject to cancellation by either party on twelve (12) months prior written notice, such cancellation to be effective as of December 31, 1979, or any December 31 thereafter.

PART NUMBER SIX OF THE AGREEMENT TITLED "COMMISSION"

Effective September 1, 1974, FORSHAW shall receive a monthly commission based on all sales solicited by FORSHAW, and accepted and invoiced by Vulcan during the preceding month. This commission shall be seven and one-half percent (7-1/2%) of the total invoiced amount, less all freight charges which may have been included in the invoices. For the purposes of this agreement, Vulcan shall assume full responsibility for the accounts receivable and no deductions or withholding of commissions will be made from the commissions for unpaid invoices. It is understood and agreed Vulcan reserves the right, however, not to accept orders forwarded to it by FORSHAW for any reason.

Vulcan retains the right to determine the inclusion or exclusion of any specific consumer accounts covered by this agreement in cases in which the product may be sold outside of and shipped into

shall receive copies of all such invoices.

The amount of the discount will be subject to semi-annual review by both parties and may be revised upward or downward as of the first day of March or September of any calendar year, if changes in the marketplace indicate mutual advantage and such changes are mutually agreed to by both parties.

PART NUMBER FOURTEEN OF THE AGREEMENT TITLED "WAIVER"

The modifications of the agreement contained in the addendum shall in no way modify the waiver contained in the agreement and shall be limited to the specific modifications herein stated.

IN WITNESS WHEREOF, the parties intending to be legally bound hereto, have caused this addendum to the agreement to be executed by their respective representatives thereunto duly authorized this 27th day of August, 1974.

FORSHAW CHEMICALS INCORPORATED

Thomas Forshaw
By President
Title

"Forshaw"

498- JMA
VULCAN MATERIALS COMPANY
Chemicals Division

By Lee Bailz
Title Pres.

"Vulcan"

August 29, 1974

230

Mr. Thomas Forshaw
President
Forshaw Chemicals Inc.
Box 6055
Charlotte, North Carolina 28207

Dear Tom:

Enclosed you will find fully executed copies of the addendums to the 1972 Formulator and Agency agreements for attachment to your contracts and for your files.

The contents of your two letters with regard to the addendums have been noted by Lee Bailey, Tom Holcomb, and myself and we will file these with the addendums for future consideration as the need arises.

Sincerely,



Howard A. Stedman
Manager, Agricultural Chemicals

HAS:bh

Enclosures

SEP 3 1974

The modifications of the agreement contained in the addendum shall in no way modify the waiver contained in the agreement and shall be limited to the specific modifications herein stated.

IN WITNESS WHEREOF, the parties intending to be legally bound hereto, have caused this addendum to the agreement to be executed by their respective representatives thereunto duly authorized this 27th day of August, 1974.

FORSHAW CHEMICALS INCORPORATED

By Thomas Forshaw
Pres.
Title

"Forshaw"

WAS SA
VULCAN MATERIALS COMPANY
Chemicals Division

By Joe L. Bailey
President
Title

"Vulcan"

ADDENDUM TO FORMULATOR AGREEMENT DATED JANUARY 31, 1972

WHEREAS, an agreement was made on the 31st day of January, 1972, by and between VULCAN MATERIALS, a New Jersey Corporation, with its Chemicals Division office at Post Office Box 545, Wichita, Kansas 67201 (hereinafter referred to as "VULCAN"), and FORSHAW CHEMICALS INCORPORATED, a North Carolina Corporation, with offices at 650 State Street, Charlotte, North Carolina 28208 (hereinafter referred to as "FORSHAW").

NOW, THEREFORE, in consideration of the material advantages to both parties, the parties agree to the following modifications and or changes in the agreement as follows:

PART NUMBER ONE OF THE AGREEMENT TITLED "TERM"

The term of the agreement shall be extended from December 31, 1976 to December 31, 1979, and shall continue from year to year thereafter, subject to cancellation by either party on twelve (12) months prior written notice, such cancellation to be effective as of December 31, 1979, or any December 31 thereafter.

PART NUMBER SEVEN OF THE AGREEMENT TITLED "DISCOUNT"

Effective September 1, 1974, Forshaw will receive a seven and one-half percent (7-1/2%) discount from Vulcan's established consumer prices on all 40,000 pound minimum shipments of packaged or bulk penta purchased by Forshaw and shipped via rail and/or bulk truckloads to Forshaw's formulating plant at Charlotte, North Carolina, or other locations which are mutually agreed to by both parties. Vulcan's established consumer prices are quoted f.o.b. Wichita, Kansas, with the basis of freight charges quoted in a manner generally competitive in the marketplace. The amount of the discount and the basis of freight charges will be subject to semi-annual review by both parties and may be revised upward or downward as of the first day of March or September of any calendar year, if changes in the marketplace indicate mutual advantage and such changes are mutually agreed to by both parties.

WHEREAS, an agreement was made on the first day of January, 1972, by and between VULCAN MATERIALS, a New Jersey Corporation, with its Chemicals Division office at Post Office Box 545, Wichita, Kansas 67201 (hereinafter referred to as "VULCAN"), and FORSHAW CHEMICALS INCORPORATED, a North Carolina Corporation, with offices at 650 State Street, Charlotte, North Carolina 28208 (hereinafter referred to as "FORSHAW").

NOW, THEREFORE, in consideration of the material advantages to both parties, the parties agree to the following modifications and or changes in the agreement as follows:

PART NUMBER ONE OF THE AGREEMENT TITLED "TERM"

The term of the agreement shall be extended from December 31, 1976 to December 31, 1979, and shall continue from year to year thereafter, subject to cancellation by either party on twelve (12) months prior written notice, such cancellation to be effective as of December 31, 1979, or any December 31 thereafter.

PART NUMBER SEVEN OF THE AGREEMENT TITLED "DISCOUNT"

Effective September 1, 1974, Forshaw will receive a seven and one-half percent (7-1/2%) discount from Vulcan's established consumer prices on all 40,000 pound minimum shipments of packaged or bulk penta purchased by Forshaw and shipped via rail and/or bulk truckloads to Forshaw's formulating plant at Charlotte, North Carolina, or other locations which are mutually agreed to by both parties. Vulcan's established consumer prices are quoted f.o.b. Wichita, Kansas, with the basis of freight charges quoted in a manner generally competitive in the marketplace. The amount of the discount and the basis of freight charges will be subject to semi-annual review by both parties and may be revised upward or downward as of the first day of March or September of any calendar year, if changes in the marketplace indicate mutual advantage and such changes are mutually agreed to by both parties.

PART NUMBER FOURTEEN OF THE AGREEMENT TITLED "WAIVER"

The modifications of the agreement contained in the addendum shall in no way modify the waiver contained in the agreement and shall be limited to the specific modifications herein stated.

IN WITNESS WHEREOF, the parties intending to be legally bound hereto, have caused this addendum to the agreement to be executed by their respective representatives thereunto duly authorized this 27th day of August, 1974.

FORSHAW CHEMICALS INCORPORATED

By

Horacio Forshaw
Pres.
Title

"Forshaw"

THAS SA
VULCAN MATERIALS COMPANY
Chemicals Division

By

Joe L. Bailey
President
Title

"Vulcan"

AGENCY AGREEMENT

THIS AGREEMENT made this 31st day of January, 1972, by and between VULCAN MATERIALS COMPANY, a New Jersey Corporation, with its Chemicals Division office at Post Office Box 545, Wichita, Kansas 67201 (hereinafter referred to as "VULCAN"), and FORSHAW CHEMICALS INCORPORATED, a North Carolina corporation, with offices at 650 State Street, Charlotte, North Carolina 28208 (hereinafter referred to as "FORSHAW"),

WITNESSETH:

WHEREAS, Vulcan is engaged in the production of technical pentachlorophenol (hereafter referred to as "penta"); and

WHEREAS, Vulcan desires that Forshaw act as its agent for the solicitation of orders for the sale of such product; and

WHEREAS, Forshaw is knowledgeable with respect to the properties and uses of penta and has contacts within the wood pressure treating industry; and

WHEREAS, Forshaw desires to act as Vulcan's agent for the solicitation of orders for the sale of penta within the wood pressure treating industry,

NOW, THEREFORE, in consideration of the premises and the material advantages to both parties and of the covenants and agreements hereof to be kept and performed, the parties hereto agree as follows:

1. AGENCY CREATED. Forshaw is hereby designated as Vulcan's agent solely for the solicitation of orders for the sale of penta in and for the territory set out in Exhibit "A" attached hereto

months' prior written notice, such cancellation to be effective as of December 31, 1976, or any December 31 thereafter.

3. SPECIFICATIONS AND WARRANTY. The penta for which orders are to be solicited shall meet the specifications and be subject to the warranty set out in Exhibit "B" attached hereto and made a part hereof.

4. BASIC AGREEMENT. Forshaw agrees to solicit orders for the sale of penta as the agent of Vulcan. All orders so solicited by Forshaw shall be subject to acceptance by Vulcan at Wichita, Kansas.

Vulcan agrees to maintain adequate inventories of penta in bulk and in 50-pound net bags at Vulcan's Wichita, Kansas plant. Vulcan will also maintain adequate inventories of 50-pound net bags at competitive shipping locations such as Beaumont, Texas, Saginaw, Michigan, and St. Louis, Missouri. Adequate inventories of penta to fulfill orders solicited by Forshaw will be determined and maintained by Vulcan at all times.

Forshaw shall provide Vulcan with a schedule reflecting its best forecast as to the quantities of penta required to fill all orders which it anticipates soliciting for acceptance by Vulcan during each of the next two succeeding months from the current date. Such schedule shall be updated on or before the first day of each month hereafter.

5. DILIGENT PERFORMANCE. Forshaw agrees to diligently solicit orders for penta on behalf of Vulcan from consumers in the wood pressure treating trade in the area established in Exhibit "A" hereof. It is understood and agreed, however, that Vulcan retains the

Vulcan's satisfaction, Vulcan's stated modification of the terms of this agreement shall become effective at the expiration of such 90-day period.

In order to make available to Forshaw an attractive business opportunity as agent for Vulcan, during the pendency of this agreement, with respect to any territory then being serviced by Forshaw, Vulcan agrees not to utilize any other method of solicitation, direct or indirect, except for those accounts set out in Exhibit "A" hereof.

6. COMMISSION. Forshaw shall receive a monthly commission based on all sales solicited by Forshaw, and accepted and invoiced by Vulcan during the preceding month. This commission shall be ten per cent (10%) of the total invoiced amount, less all collectible freight charges which may have been included in the invoices. For the purpose of this agreement, Vulcan shall assume full responsibility for the accounts receivable and no deductions or withholding of commissions will be made from the commissions for unpaid invoices. It is understood and agreed Vulcan reserves the right, however, not to accept orders forwarded to it by Forshaw for any reasons.

Vulcan retains the right to determine the inclusion or exclusion of any specific consumer accounts covered by this agreement in cases in which the product may be sold outside of and shipped into the geographical area defined in Exhibit "A" hereof, or sold inside of and shipped outside such geographical area.

Copies of Vulcan invoices for Penta to all accounts covered by this contract shall reflect Forshaw as Vulcan's agent and Forshaw shall receive copies of all such invoices.

7. INSURANCE. Forshaw shall carry, at its own expense, liability, workmen's compensation, and other business insurance,

Jr *mdg*

as an additional insured.

8. RELATION OF FORSHAW AND VULCAN. It is expressly understood that the position and function of Forshaw pursuant to the terms of this agreement is one of an agent of Vulcan. All orders (offers to purchase) tendered to Forshaw by third parties are subject to acceptance or rejection by Vulcan at its Wichita office. Pursuant to this agreement Vulcan shall retain all indicia of ownership, including title, dominion and risk, with respect to the products for which Forshaw solicits orders until indicia of ownership are transferred to the party which initiated the order (that is, the party tendering its order to Forshaw, as agent for Vulcan, for transmission to Vulcan to accept or reject). It is contemplated by this agreement that Forshaw will never assume title, dominion or risk, or any other indicia of ownership, with respect to products covered by such orders which are accepted by Vulcan.

9. FORCE MAJEURE. If either party shall be prevented or delayed in the performance of any or all of the provisions hereof, by reason of any labor dispute, industrial disturbance, delay in transportation, act of God, fire, explosion, epidemic, war, embargo, accident, governmental action, or any cause beyond its control, whether similar to the causes enumerated or otherwise, the obligations hereunder of such party shall be suspended for so long as such case shall be in effect and any delay or loss suffered by the other party shall not be chargeable in any way to such party; provided, however, the party suffering such cause shall remedy the same with all reasonable dispatch. The party suffering such cause shall immediately notify the other party of any inability to perform its obligations hereunder.

in writing and signed by its authorized representatives, except as provided in Paragraph 5 hereof. All proposals, negotiations, and representations made prior and with reference hereto, are merged herein.

11. ASSIGNABILITY. Neither party hereto shall have the right to assign this agreement or to make a transfer of this agreement by operation of law or otherwise, without the prior written consent of the other.

12. WAIVER. The waiver by either party hereof of any breach or failure to enforce any of the terms or conditions of this agreement shall be limited to the specific breach avowed, or the specific failure to enforce and shall not in any way affect, limit or waive that party's right at any time to enforce strict compliance with every other term or condition hereof, or its right to enforce strict compliance in the future with terms or conditions so avowed or failed to be enforced.

13. NOTICES. All notices required by this agreement shall be addressed as follows, unless otherwise advised:

(a) In the case of Forshaw to:

Forshaw Chemicals Incorporated
650 State Street
Charlotte, North Carolina 28208

(b) In the case of Vulcan to:

Vulcan Materials Company
Chemicals Division
P. O. Box 545
Wichita, Kansas 67201

IN WITNESS WHEREOF, the parties, intending to be legally bound hereto, have caused this agreement to be executed by their respective representatives thereunto duly authorized the day and

Forshaw Territory Defined

Vulcan hereby authorizes Forshaw to solicit orders from the wood pressure treating industry, except as hereinafter provided, in the geographical area designated as follows:

- | | | |
|-------------------|-------------------|---------------|
| 1. Alabama | 8. Pennsylvania | 15. Tennessee |
| 2. Georgia | 9. Maryland | 16. Kentucky |
| 3. Florida | 10. Delaware | |
| 4. South Carolina | 11. New Jersey | |
| 5. North Carolina | 12. Connecticut | |
| 6. Virginia | 13. Massachusetts | |
| 7. West Virginia | 14. New Hampshire | |

Provided, however, that the following accounts are expressly excluded from this agreement and exclusively reserved by Vulcan:

1. Gulfport Creosoting Co., Mobile, Alabama.
2. International Paper Co., Mobile, Alabama.
3. Koppers Co., Inc., Pittsburg, Pennsylvania, and all plant locations.
4. Homosote, Inc., Trenton, New Jersey.
- *5. American Creosote Works, Inc., Jackson, Tennessee.
- *6. American Creosote Works, Inc., Pensacola, Florida.

*Excluded from agreement if product is purchased at New Orleans, Louisiana. Included in agreement if product is purchased at customer's plants located at Jackson, Tennessee, and Pensacola, Florida.

Specification for Pentachlorophenol

January 31st, 1972

To contract dated ~~December 1, 1971~~, between Forshaw Chemical Incorporated and Vulcan Materials Company, Chemicals Division.

<u>CHARACTERISTICS</u>	<u>METHODS</u>	<u>SPECIFICATIONS</u>
Appearance	Vulcan	Polished Flakes
Color	Vulcan	Light Brown
Pentachlorophenol, % Wt.	Vulcan	86.0 Minimum
Total Chlorinated Phenols % Wt.	AWPA	96.0 Minimum
Inert Ingredients, % Wt.	Calculated*	4.0 Maximum
Solidifying Point, °C	AWPA	180.0 Minimum
Alkali Insolubles, % Wt.	AWPA	0.50 Maximum
Particle Size, % Wt.	US Std. Sieve	100% minus No. 3

* 100% minus total chlorinated phenols.

WARRANTY OF VULCAN

A. Vulcan warrants that the penta supplied hereunder shall conform to the specifications set out above.

B. Vulcan further warrants that the penta supplied hereunder shall be fit for the purposes of wood pressure preservation only if used in accordance with the specifications and procedures established by the American Wood Preservers Association. There is no warranty that the penta to be supplied hereunder shall be fit for any other purpose whatsoever, nor is there any other warranty, express or implied, except

Attachment C-1

FORMULATOR AGREEMENT

THIS AGREEMENT made this 31st day of January, 1972, by and between VULCAN MATERIALS COMPANY, a New Jersey Corporation, with its Chemicals Division office at Post Office Box 545, Wichita, Kansas 67201 (hereinafter referred to as "VULCAN"), and FORSHAW CHEMICALS INCORPORATED, a North Carolina Corporation, with offices at 650 State Street, Charlotte, North Carolina 28208 (hereinafter referred to as "FORSHAW"),

WITNESSETH:

WHEREAS, Vulcan is engaged in the production of technical pentachlorophenol (hereinafter referred to as "penta") and desires to sell this product to Forshaw; and

WHEREAS, Forshaw is engaged in the formulation of wood preservative products which are sold to the wood pressure-treating industry; and

WHEREAS, Forshaw uses penta and other materials in the formulation of such products; and

WHEREAS, Forshaw desires to assure itself of a source of supply of penta for the term of this agreement;

NOW, THEREFORE, in consideration of the premises and the material advantages to both parties and of the covenants and agreements hereof to be kept and performed, the parties hereto agree as follows:

1. Term: The term of this agreement shall be from the date hereof to December 31, 1976, and shall continue from year to year thereafter, subject to cancellation by either party on twelve (12) months' prior written notice, such cancellation to be effective as of December 31, 1976, or any December 31 thereafter.

2. Basic Agreement: Vulcan agrees to sell to Forshaw, and Forshaw agrees to buy from Vulcan, Forshaw's

total requirements of penta for the term of this agreement, subject to the terms of this agreement. Such sales and purchases shall be made at Vulcan's established consumer prices for penta, subject to any discount to which Forshaw is entitled pursuant to Paragraph 7 of this agreement and also subject to any freight or taxes charged to Forshaw pursuant to Paragraphs 5 or 10 of this agreement. Forshaw's requirements of penta are estimated at 500,000 pounds per year. Forshaw's purchases in any one calendar month shall not exceed twenty percent (20%) of Forshaw's previous year's requirements of penta without the consent of Vulcan.

Vulcan shall maintain adequate inventories of penta to fulfill Forshaw's scheduled requirements for the delivery of penta.

Forshaw shall provide Vulcan with a schedule reflecting the quantities of penta Forshaw desires to have shipped to it during each of the next two succeeding months, on or before the first day of each month.

3. Specifications: The penta to be delivered to Forshaw by Vulcan shall meet the specifications attached hereto and made a part hereof as Exhibit "A".

All claims relating to quality, quantity, weight or condition of product shall be waived by Forshaw unless presented to Vulcan within ninety (90) days of receipt of such product by Forshaw.

4. Manner of Delivery: Vulcan shall load the penta into bags and place such bags on pallets, for shipment via railroad cars or load into bulk storage for shipment via bulk air-unloading trucks, as Forshaw shall direct.

Such bags shall contain 50 pounds net product, and Vulcan shall maintain its bagging equipment so that the amounts packed in bags will comply with the requirements of

governmental authorities having jurisdiction but with tolerances of no greater than 0.5 percent. Vulcan shall be responsible for the appropriate labeling of such bags and the registration of such labels with the governmental authorities having jurisdiction.

The shipments, whether in bulk or bags, shall not be less than 40,000 pounds net product. The amount of materials in each bulk delivery shall be determined by weighing on certified scales, the conveyances before and after loading. Vulcan upon request shall provide Forshaw with a certified scale ticket for each delivery.

5. Freight Charges and/or Freight Allowances:

In addition to the established consumer price (f.o.b. Wichita) charges to Forshaw (less any discount credited to Forshaw pursuant to Paragraph 7 hereof); Forshaw shall pay such freight charges as shall be determined by Vulcan in a manner generally competitive in the marketplace on all shipments made to Forshaw via either commercial carriers or Vulcan trucks. Freight allowances credited to Forshaw for shipments made via Forshaw trucks will be determined by Vulcan in a manner generally competitive in the marketplace; provided, however, that the amount of freight credited to Forshaw shall not exceed the lowest published I.C.C. rate or charges for the actual weight shipped from Wichita, Kansas, to Charlotte, North Carolina; further it is agreed shipments will only be made from Vulcan's Wichita, Kansas, plant.

6. Alternate Sources of Supply: Forshaw will not

purchase its requirements of penta from manufacturers other than Vulcan except with the consent of Vulcan so long as Vulcan is able to supply the needs of Forshaw. Provided, however, that if, during the term of this agreement, and after giving effect to any freight charges as provided in Paragraph 5 hereof and to any discount allowed in Paragraph 7 hereof, Forshaw is able to purchase penta conforming to the specifications shown in Exhibit "A" from another manufacturer, at a lower delivered cost, and such penta is manufactured

in the United States and, further, Forshaw presents written evidence of such fact and commitment for sale at such lower delivered cost satisfactory to Vulcan, Vulcan may either adjust its price to meet such lower cost or Forshaw may purchase such penta from such other manufacturer.

7. Discount: Forshaw will receive a fifteen percent (15%) discount from Vulcan's established consumer prices on all 40,000-pound minimum shipments of packaged or bulk penta purchased by Forshaw and shipped via rail and/or bulk truckloads to Forshaw's formulating plant at Charlotte, North Carolina, or other locations which are mutually agreed to by both parties. Vulcan's established consumer prices are quoted f.o.b. Wichita, Kansas, with the basis of freight charges quoted in a manner generally competitive in the marketplace.

8. Terms of Payment: Payment terms are net thirty (30) days from date of invoice, payable in Wichita, Kansas, in lawful money of the United States. Acceptance by Vulcan of bank drafts, checks or other media of payment will be subject to immediate collection at the full face amount thereof. If Forshaw fails to pay any invoice within sixty (60) days after its date, Vulcan may decline to make deliveries except for cash *until such time as Forshaw has paid all invoices remaining unpaid more than thirty (30) days from their respective dates.* *It* *me*

9. Force Majeure: If either party shall be prevented or delayed in the performance of any or all of the provisions hereof, by reason of any labor dispute, industrial disturbance, delay in transportation, act of God, fire, explosion, epidemic, war, embargo, accident, governmental action, or any cause beyond its control, whether similar to the causes enumerated or otherwise, the obligations hereunder of such party shall be suspended for so long as such case shall be in effect and any delay or loss suffered by the other party shall not be chargeable in any way to such party; provided,

however, the party suffering such cause shall remedy the same with all reasonable dispatch. The party suffering such cause shall immediately notify the other party of any inability to perform its obligations hereunder, and shall notify the other party when it is prepared to resume performance of its obligations, such notification to be not less than thirty (30) days in advance of the time at which such party may expect to resume performance of its obligations.

10. Taxes: Any tax or other charge by Federal, State, Municipal or other authority hereafter becoming effective within the period upon the production, sale and/or shipment of the product shall be added to the price of the product and paid by Forshaw.

11. Warranty:

A. Vulcan warrants that the penta supplied hereunder shall conform to the specifications set out in Exhibit "A", attached hereto and made a part hereof.

B. Vulcan further warrants that the penta supplied hereunder shall be fit for the purposes of wood pressure preservation only if used in accordance with the specifications and procedures established by the American Wood Preservers Association. There is no warranty that the penta to be supplied hereunder shall be fit for any other purpose whatsoever, nor is there any other warranty, express or implied, except as is expressly set out herein.

C. It is expressly agreed that Vulcan shall not be liable for any incidental or consequential damages arising herefrom.

12. General: No terms, conditions, or warranties other than those stated herein, and no agreements or understanding, oral or written, in any way purporting to modify these terms or conditions, shall be binding on either of the

parties hereto unless hereafter made in writing and signed by its authorized representatives. All proposals, negotiations, and representations made prior and with reference hereto are merged herein. For all purposes of this agreement, Forshaw is an independent contractor.

13. Assignability: Neither party hereto shall have the right to assign this agreement or to agree to the transfer of this agreement by operation of law or otherwise without the prior written consent of the other.

14. Waiver: The waiver by either party hereof of any breach or failure to enforce any of the terms or conditions of this agreement shall be limited to the specific breach avowed, or the specific failure to enforce and shall not in any way effect, limit or waive that party's right at any time to enforce strict compliance with every other term or condition hereof, or its right to enforce strict compliance in the future with terms or conditions so avowed or failed to be enforced.

15. Notices: All notices required by this agreement shall be addressed as follows, unless otherwise advised:

(a) In the case of Forshaw to:

Forshaw Chemicals Incorporated
650 State Street
Charlotte, North Carolina 28208

(b) In the case of Vulcan to:

Vulcan Materials Company
Chemicals Division
P. O. Box 545
Wichita, Kansas 67201

IN WITNESS WHEREOF, the parties intending to be legally bound hereto, have caused this agreement to be executed by their respective representatives thereunto duly authorized this 31st day of January, 1972.

FORSHAW CHEMICALS INCORPORATED

VULCAN MATERIALS COMPANY
Chemicals Division

By

Thomas Forshaw

By

M. E. Clark

Executive Vice President

Title

Title

2-3-72

"Forshaw"

"Vulcan"

W. P. Forshaw

SPECIFICATION FOR PENTACHLOROPHENOL

To Contract dated January 31st, 1972, between Forshaw Chemical Incorporated, and Vulcan Materials Company, Chemicals Division.

<u>Characteristics</u>	<u>Method</u>	<u>Specifications</u>
Appearance	Vulcan	Polished Flakes
Color	Vulcan	Light Brown
Pentachlorophenol, % Wt.	Vulcan	86.0 Minimum
Total Chlorinated Phenols % Wt.	AWPA	96.0 Minimum
Inert Ingfedients, % Wt.	Calculated*	4.0 Maximum
Solidifying Point, °C	AWPA	180.0 Minimum
Alkali Insolubles, % Wt.	AWPA	0.50 Maximum
Particle Size, % Wt.	US Std. Sieve	100% minus No. 3

*100% minus total chlorinated phenols.